
(2006) 12 JH CK 0034
In the Jharkhand High Court

Devraj Sao, Umacharan Sao and Bundiya Devi	APPELLANT
Vs	
The State of Bihar (Jharkhand)	RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:

Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 201, 304, 304B, 34, 498A

Citation : (2007) 1 DMC 735

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—The instant appeal has been directed against the impugned judgment of conviction and order of sentence passed by Shri Dhruv Narayan Upadhyay, 1st Additional Sessions Judge Giridih in S.T. No. 250 of 1994 on 1.7.1999 whereby and whereunder the appellant No. 1, Devraj Sao and appellant No. 3 Bundiya Devi have in on convicted u/s 304B of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for seven years whereas the appellant No. 2, Umacharan Sao though was convicted under same offence but has been sentenced to undergo Rigorous Imprisonment for ten years. The appellants have further been sentenced to undergo Rigorous Imprisonment for two years each u/s 493A of the Indian Penal Code each with stipulation of fine and rigorous imprisonment for one year each for their conviction u/s 201 I.P.C.

2. The recourse of law was set on motion on the written report of the informant, Rameshwar Sao (P.W.5) presented before the Officer-in-charge, Giridih (M) police station giving rise to Giridih Muffasil P.S. Case No. 129 of 1993. The informant alleged inter alia that he had married his daughter, Usha Devi some two years ago with the appellant No. 2, Uma Charan Sao of village Koldiha. On the eve of her marriage, he had given Rs. 15,000/- in cash, besides utensil, ornaments and cloths on demand. After the marriage, his daughter went to her matrimonial home. When he visited the matrimonial home of his daughter after two months

to take her back on executing "Bidai" it was refused by the appellant No. 1. Devraj Sao and the appellant No. 2, Umacharan Sao who placed their demand of T.V. Radio, Cycle and Wrist watch. However, after persuasion, the informant took away his daughter with him to his home where Usha Devi (since deceased) complained against her husband, father-in-law, mother-in-law as well as sister-in-laws alleging that they had always been extending physical and mental torture to her to bring T.V. Cycle as well as wrist watch from her parental home. After 15 days the appellant No. 2, Uma Charan Sao (son-in-law of the informant) came there and took away his wife with him and since then she was living at her matrimonial home. After some time she had sent information to the informant about her misery that she was being assaulted and tortured by the appellants including her sister-in-laws who were widows and living at their parental home for the dowry. On 23.7.1993 the appellant No. 1 Devraj Sao, who is the father-in-law of the deceased, came to the informant and appraised that Usha Devi was missing since 21.7.1993. He enquired her whereabouts to which the informant expressed his ignorance and he also came out in search of his daughter to her matrimonial village Koldiha, Bish Number. The informant searched her in the villages of his near relatives. However, he came to know from the villagers of her matrimonial home that all the accused persons including the appellants had assaulted his daughter, Usha Devi for dowry on the previous Wednesday. The informant had reason to believe that the dead body of his daughter was thrown into Achanak (abandoned coal mine, filled with water). The dead body of Usha Devi was recovered from "Achanak" The police registered Giridih P.S. Case No. 129 of 1993 u/s 304B/498A/201/34 of the Indian Penal Code and after investigation submitted chargesheet against the accused persons including the appellants for commission of dowry death of Usha Devi and accordingly, charge was framed against five accused persons, viz, Devraj Sao, Umacharan Sao and Bundiya Devi (appellants) and Malo Devi and Kunti Mosamat (sister-in-laws) for the offence u/s 304B/498A/201 read with Section 34 of the Indian Penal Code and all the accused were put on trial. After trial, the accused Malo Devi and Kunti Mosamat were acquitted whereas the appellants were held guilty and were substantially sentenced.

3. The learned Counsel appearing for the appellants, Mr. Ughal submitted that all together seven witnesses were produced and examined on behalf of the prosecution Viz P.W.1 Chohini Devi, P.W.2, Motilal Yadav, P.W.3. Rajendra Yadav, P. W.4 Dr. B.P. Singh, P.W.5 Rameshwar Sao, P.W.6 Raj Kumar Sao (brother of Usha Devi) and P.W.7, Investigating Officer.

4. Advancing his arguments learned Counsel further submitted that the trial court below failed to take into consideration the evidence of P.W.4, Dr. B.P. Singh, Medical Officer who held postmortem examination on the body of Usha Devi on 26.7.1993 at about 2.15 p.m. with the following findings:

Decomposed body swollen, foul smell, peeling of skin, greenish colour at places

Teeth-intact, tongue-protruded, frothy reddish fluid at mouth and nostrils.

Features-unrecognizable

On dissection-:

Sub cutaneous tissues in neck NAD.

Larynx and tracheas in stage of Putrefaction:

Hyoidbone-: in tact

Lungs:- in stage of Putrefaction.

Heart:- Soft, scabby and empty both sides.

Liver:- Soft and scabby, in stage of Putrefaction;

Spleen and Kidneys - in stage of Putrefaction.

Stomach:- empty;

Mucous membrane- dark red, irregular patches on posterior wall involving whole thickness of stomach wall.

Urinary bladder:- empty.

Uterus:- normal size (non gravid).

Skull bones:- Intact. Brain liquefied.

No evidence of external and internal injuries either antemortem or postmortem.

Definite opinion as to cause of death could not be ascertained during the course of post mortem examination, might on account of drowning. The following viscera were preserved for chemical Analysis:

Stomach, spleen, kidney, a portion of Liver, Lung, heart, skull and intestine were. Time elapsed since death till P.M. examination was assessed about 3 to 5 days.

5. With reference to the post mortem report as well as the examination of the Doctor P.W.4 the learned Counsel submitted that no definite opinion for the cause of death could be established by the prosecution and in this manner the allegation as levelled against the appellants that they assaulted Usha Devi to death and thereafter her dead body was thrown in the Achanak with the intention to conceal the evidence of such offence could not be proved. Usha Devi was reported missing since evening of 21.7.1993 and Post mortem was held on 26.7.1993. The time elapse since death "3 to 5 days" assessed by Doctor strengthens the defence version that she might have fell in the "Achanak" when she had been to answer the call of nature. The post mortem report did not disclose any post mortem or ante mortem injury which belied in the allegation of torture and assault and thereafter concealment of dead body.

6. The learned Counsel further submitted that the prosecution failed to prove that soon before her death or in its near proximity Usha Devi was subjected to

cruelty and torture for dowry and as such no presumption can be drawn against the appellants in absence of required ingredients to constitute the offence u/s 304B of the Indian Penal Code. Even the demand of dowry as alleged by the prosecution against the appellants could not be established and the trial court below failed to take into consideration the vital contradiction in the statements of the P.W.5 and P.W.6.

7. P.W.5, Rameshwar Sao (informant) deposed in the trial court as contained in paragraph-2 of his deposition that when his son Raj Kumar Sao (P.W.6) went to the matrimonial home of Usha Devi to execute "Bidai" the in-laws as well as the husband of Usha Devi demanded T.V. Radio, wrist watch and cycle putting a condition that Usha Devi would be permitted to go with him only when the demanded articles would be made over to them and, as such Usha Devi could not accompany to her brother and the matter was communicated to him. His daughter also communicated the demand raised by the appellants and the assault inflicted upon her by them. On the other hand, P.W.6, Raj Kumar (brother of the deceased) deposed in his deposition that his father (P.W.5) went to the matrimonial home of Usha Devi to execute Bidai where his sister Usha Devi apprised her father that her husband and in-laws had been assaulting her for T.V., Wrist watch, Cycle etc. His sister had come to her parental home and narrated the cruelty inflicted upon her in respect of demand of dowry to her mother. The learned Counsel submitted that in this manner the contradictory statements of both the important witnesses neutralises the allegation of demand of dowry as against the appellants.

8. The learned Counsel pointed out that admittedly, there was no eye witness of the occurrence and the conviction of the appellants has been inflicted only on circumstantial evidence but the chains of circumstance leading to the complicity of the appellants were not complete, in absence of specific cause of death of Usha Devi. The local witness of the matrimonial village of Usha Devi, who could have been competent witnesses on the allegation of demand of dowry, have not been examined on behalf of the prosecution and the conviction of the appellants on the uncorroborated statements of the P.Ws 5 and 6 is unsustainable. The prosecution has miserably failed to connect the circumstances which could point out to the guilty of the appellant for the alleged charge. The learned Counsel emphasized that the written report was scribed by one Surrender which was admitted by P.Ws 5 and 6. Both witnesses are illiterate persons. The allegation as narrated in the written report by the scribe Surrender was made more colourful beyond the actual fact which was signed by P.W.5 without being acquainted of its contents being read over to him. Therefore, the written report presented before the police cannot be said to be the true narration of the facts of the case and the allegation against the appellants on such written report is unsustainable. Even no Panchayati was held to resolve the dispute between the families on the issue of demand of dowry or that any complain was made to the local police station or authority for the alleged demand of dowry which could have been the corroborative piece of evidence.

9. The learned Counsel stressed that the investigation of the case was done in most perfunctory manner which could be evident from the fact that I.O. did not send to viscerae to the Forensic Science Laboratory to ascertain the cause of death of Usha Devi and that he did not visit the matrimonial village of Usha Devi but filed the chargesheet against the accused persons. Finally it has been submitted that the learned court below grossly erred by convicting the appellants only on the ground that Usha Devi sustained unnatural death within seven years of her marriage at her matrimonial home and prior to that demand of dowry was made. The demand of dowry by the appellants could not be proved in this case, therefore, the conviction of the appellants as well as sentence thereto is unsustainable and the appellants may be acquitted.

10. Having regard to the facts and circumstances of the case, I find that Usha Devi died within seven years of her marriage at her matrimonial village and her dead body was recovered from Achanak, i.e. an abandoned mining area, filled with water.

11. In order to attract the offence u/s 304B of the Indian Penal Code, the essential ingredients are:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances.

(ii) Such death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband soon before her death.

(iv) Such cruelty or harassment should be for or in connection with demand for dowry.

(v) Such cruelty or harassment was made soon before her death.

12. The Apex Court in *Hira Lal and Others Vs. State (Govt. of NCT) Delhi*, observed:

Presumption u/s 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The essentials required to be proved for raising the said presumption are that:

(i) The question before the court must be whether the accused has committed the dowry death of the woman.

(ii) The woman was subjected to cruelty or harassment by her husband or his relatives.

(iii) Such cruelty or harassment was for or in connection with any demand for dowry.

(iv) Such cruelty or harassment was soon before her death.

13. It is remarkable to note from perusal of the post mortem report that P.W.4 Doctor B.P. Singh failed to give definite opinion about the cause of death of Usha Devi except his presumption that she died of drowning. But on the other hand Doctor did not find water either in the stomach of Usha Devi or in her lung so as to establish that at the time of her accidental drowning water, gushed in her stomach as well as in the lungs. Mr. N.J. Modi has defined drowning which is a form of death in which atmospheric air is prevented from entering the lungs by submersion of the body in water or any other fluid medium. He further narrates that in case of drowning grass, gravel sticks, weeds twigs or leaves may be found firmly grasped in the hands as a result of cadaveric spasm. The presence of this sign is indicative of death due to drowning as it shows struggle of the victim for the life. The presence in the stomach of a certain quantity of water is regarded as important sign of death, particularly if the water possesses the same characteristics as that in which the body was found immersed and contains sand, mud, elgae, weeds and fine shells etc. Modi emphasised that it was almost impossible for water to get into the stomach if a body is submerged after death. However, Modi observed that in the case of drowning, by the time the dead body is brought to Mortuary for post mortem, its putrefaction starts and on account of such putrefaction, no external violence is visible on the body.

14. I find from the perusal of the record as well as the judgment passed by the 1st Additional Sessions Judge, Giridih that P. W.5, Rameshwar Sao (informant) and P.W.6 Raj Kumar Sao by their substantive evidence have supported the omnibus allegation against the appellants that soon before the death of Usha Devi, they had put the demand of T.V., Wrist watch, Radio and Cycle before her to be brought from her parental home. They further supported the allegation that Usha Devi had communicated them prior to her death about the demand of dowry in the kind stated above more specific by her husband but in general by her in-laws which is a relevant fact and corroborative in nature.

15. In the instant appeal, the appellant No. 1 Devraj Sao is the father-in-law, appellant No. 2 Uma Charan Sao is the husband and appellant No. 3 Bundia Devi is the mother-in-law of the deceased, Usha Devi. The learned Counsel for the appellants submitted that father-in-law and mother-in-law of the deceased can not be the beneficiaries of the alleged demand of T.V., Wrist watch. Cycle and Radio etc. which is specific against the husband Uma Charan Sao who could be the ultimate beneficiary. The allegation of demand of dowry against the appellants No. 1 and 3 as narrated by the P.W.5 and P.W.6 is mainly to implicate all the members of the family of the husband, Uma Charan Sao of the victim and on similar charge the other two accused Malo Devi and Kunti Devi were acquitted by the trial court below. The defence of the father-in-law, Devraj Sao and the mother-in-law, Bundia Devi is on similar footing which was not considered by the trial court.

16. From the perusal of the case record there appears substance in the argument advanced on behalf of the appellants No. 1 and 3 that no specific allegation of

torture was attributed against any of them and they were not the ultimate beneficiaries of the nature of demand of dowry as aforesaid. I further find that the husband of the deceased Uma Charan Sao had taken away his wife to his home only 15 days prior to her unnatural death which is a strong circumstance against him. I, therefore, find from the materials on the record that the chain of circumstances leading to the guilt of the appellants No. 1 and 3 is not complete and they deserve benefit of doubt. It is settled law that graver the offence, heavier the burden of proof lies upon the prosecution to prove the case. In the circumstances both the appellants Devraj Sao and Bundia Devi are acquitted after according them benefit of doubt and their bail bonds stand discharged.

17. But in the facts and circumstances and the discussions made in the foregoing paragraphs, I find that the prosecution has proved all the required ingredients of the charge against the appellant No. 2 Uma Charan Sao who has been rightly held guilty and convicted for the offence u/s 304 B IPC and sentenced to undergo rigorous imprisonment for ten years. I am of the opinion, therefore, that the judgment of conviction and order of sentence passed against the appellant Uma Charan Sao does not call for interference in the present appeal. I further find that since requirement for constituting an offence u/s 498A is contained in Section 304B IPC, I am further of the opinion that no separate conviction u/s 498A IPC is warranted against the appellant Uma Charan Sao. For the aforesaid reasons he is acquitted from his conviction u/s 498A IPC. With the aforesaid modification, this Criminal appeal is dismissed as against Uma Charan Sao. Bail granted to him on 30.8.1999 stands vacated and Uma Charam Sao is directed to serve out the sentence. The concerned court to take effective steps.